



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0352]

RIN 1625-AA00

Safety Zone; Fairport Harbor, Fairport, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of Fairport Harbor, OH. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from hazards created by shoaling in the area.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through August 19, 2023. For enforcement purposes, actual notice will be used from April 21, 2023, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0352 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Jared Stevens, Waterways Management Division, U.S. Coast Guard; telephone 216-937-0124, email D09-SMB-MSUCleveland-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard has learned that significant shoaling has developed in the vicinity of the navigational channel, and the nature and location of the shoaling presents an imminent hazard to navigation. The safety zone must be established as soon as possible for the safety of all personnel, vessels, and the marine environment; thus, it is impracticable to publish an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed in order to mitigate the safety hazards associated with the shoaling in Fairport Harbor.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231), 46 U.S.C 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3. The Captain of the Port (COTP) Buffalo has determined that the hazards associated with

shoaling in Fairport Harbor, OH are a safety concern for all marine traffic. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone until dredging can be completed in accordance with the U.S. Army Corps of Engineers' approved project depth for the federally maintained sections of the waterway.

IV. Discussion of the Rule

This rule establishes a safety zone for all federally maintained waters of Fairport Harbor, OH. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the federally maintained channel is dredged in accordance with the approved U.S. Army Corps of Engineers federal project depths. All vessels greater than 100 Gross Registered Tons shall not meet or pass another vessel while navigating within the safety zone.

The most recent U.S. Army Corps of Engineers project condition surveys and hydrological surveys can be found on their website:

<https://www.lrb.usace.army.mil/Library/Maps-and-Charts/>

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of

the safety zone. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone, and this regulatory action allows vessel traffic to transit within and around the safety zone under the conditions outlined in this rulemaking.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 120 days, or until cancelled. This rule requires all vessels greater than 100 Gross Registered Tons shall not meet or pass another vessel while navigating within the safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 1.3

2. Add § 165.T-090352 to read as follows:

§ 165.T-090352 Fairport Harbor Shoaling, Fairport, OH.

(a) *Location.* The following area is a safety zone: all federally maintained waters within Fairport Harbor, OH.

(b) *Definitions.* *Official Patrol Vessel* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP Buffalo in the enforcement of the regulations in this section.

(c) *Regulations.* (1) All vessels greater than 100 Gross Registered Tons shall not meet nor pass another vessel while navigating within the safety zone.

(2) The Coast Guard may patrol the safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM."

(3) No vessel shall anchor, block, loiter, or impede the through transit of vessels in the regulated area during the effective dates and times, unless cleared by or through an official patrol vessel. The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) Any vessel may anchor outside the regulated areas specified in this chapter, but may not anchor in, block, or loiter in a navigable channel.

(5) The Patrol Commander may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(6) The Patrol Commander will terminate enforcement of the special regulations upon satisfactory completion of dredging operations in consultation with U.S. Army Corps of Engineers and the COTP Buffalo.

(d) *Enforcement Period.* This safety zone will be enforced for 120 days starting on April 21, 2023.

Dated: April 21, 2023.

S. M. MURRAY,
COMMANDER, U.S. Coast Guard,
Alternate Captain of the Port Buffalo.

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